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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 11th September 2023

No. 13/1/9774-HII(2)-2023/13289.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 56/2021 dated 02.08.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

THE PRESIDENT/GENERAL SECRETARY CHANDIGARH MEDICAL REPRESENTATIVES ASSOCIATION(CMRA) (Workers Union)

AND

1. M/S BHARAT SERUMS & VACCINES LTD., 3RD FLOOR, LIBERTY TOWER, PLOT NO. K-10, RELIABLE PLAZA KALWA, INDUSTRIAL ESTATE AIROLI NAVI MUMBAI - 400708 (THROUGH DR. AKHILESH MISHRA, SR. VICE-PRESIDENT, HUMAN RESOURCE).
2. MR. AJAY MISHRA, DGM-HR, M/S BHARAT SERUMS & VACCINES LTD., 3RD FLOOR, LIBERTY TOWER, PLOT NO. K-10, RELIABLE PLAZA KALWA, INDUSTRIAL ESTATE AIROLI NAVI MUMBAI - 400708. (Management), referred to the said court vide our communication dated 11.05.2021.

AWARD

1. Vide Endorsement No. 13/1/9774-HII(2)-2021/5118 Dated 11.05.2021 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the demand notice dated 21.08.2020 in respect of Shri Pardeep Kumar Nakwal (*hereinafter in short referred "workman"*) raised by the President / General Secretary, Chandigarh Medical Representatives Association (CMRA) (*hereinafter in short referred "association"*) upon the M/s Bharat Serums & Vaccines Ltd. & Another (*hereinafter in short referred "management"*) under Section 2(k) of the Industrial Disputes Act, 1947 (*hereinafter in short referred "ID"*) in following words :—

"Whether the demand raised in the demand notice dated 21.08.2020 by The President/General Secretary, Chandigarh Medical Representatives Association (CMRA) AND The Management (1) M/s Bharat Serums & Vaccines Ltd., 3rd Floor, Liberty

(1793)

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Tower, Plot No. K-10, Reliable Plaza Kalwa, Industrial Estate Airoli Navi Mumbai - 400708 (Through Dr. Akhilesh Mishra, Sr. Vice-President, Human Resource) (2) Mr. Ajay Mishra, DGM-HR M/s Bharat Serums & Vaccines Ltd., 3rd Floor, Liberty Tower, Plot No. K-10, Reliable Plaza Kalwa, Industrial Estate Airoli Navi Mumbai - 400708 are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any ?"

2. Upon notice, the association appeared through its Representative Shri Naresh Chander. Statement of claim was filed on 17.09.2021. Briefly stated averments of claim statement are that the workman Pardeep Kumar Nakwal was duly selected and appointed as Business Development Executive in ARC Division of the management and joined his duties on 01.06.2009. The workman was issued employee code No.01002854 and posted at Chandigarh. Right from the date of joining his duties, workman had been performing his duties with diligence and devotion throughout and workman was never found in-wanting in the performance of his duties by his superiors at any point of time. Keeping in view the good performance of the workman, his services were confirmed vide letter dated 05.08.2010. The services of the workman apart from standing orders and other rules & regulations of the management are also governed under the Sales Promoters Act. According to the said Act, the workman falls within the definition of 'workman' and union / association and the workman can avail the remedy under the ID Act. During the course of his duties, the workman met with an accident on 04.07.2019 and suffered multiple injuries including fracture in his right leg. After accident workman was admitted in Landmark Hospital, Sector 33, Chandigarh and he remained admitted therein up to 06.07.2019. The workman was discharged from hospital on 06.07.2019 but remained confined to bed up to 15.01.2020 due to post recoveries from injuries suffered in the said accident. Soon after accident the workman informed his superiors and applied for medical leave, as were available to him, under the rules as per letter dated 05.07.2019 duly supported by medical record. Workman remained under medical leave up to 15.01.2020. The workman was found fit to join his duties by the Doctors concerned w.e.f. 16.01.2020. Thereafter, on 16.01.2020 workman submitted his joining duly supported by fitness certificate issued by the competent and authorized Doctor and started performing his duties. After performing his field duties for three days, the workman felt pain and swelling in his leg, therefore, the workman again consulted his Doctor. After check-up Doctor advised him one month more rest up to 20.02.2020. Therefore, the workman applied for medical leave up to 20.02.2020. During his rest period, on 07.02.2020, the workman was diagnosed that there is cyst in his throat, therefore, the workman was forced to extend his medical leave up to 28.02.2020. On 27.02.2020, workman got himself examined by Doctor concerned and after thorough examination workman was found fit to join his duties w.e.f. 28.02.2020 with an advice to walk with sticks and not to put excessive weight on his right leg and not to drive the two-wheeler. During the period of medical leave, the workman received an email on 21.02.2020 from management No.1 advising him to visit Mumbai. The workman duly replied the email on 28.02.2020 and apprised the management No.1 that his medical condition does not allow him to travel Mumbai at that stage and requested to allow him to resume his duties w.e.f. 01.03.2020 as per the fitness certificate issued by the Doctors. Instead of accepting the genuine request of the workman, he received another email on 28.02.2020 whereby the workman was informed that he shall not be allowed to join his duties without visit to Mumbai and comply the conditions of email dated 21.02.2020. Thereafter, the workman sent complete treatment recorded to management No.2 on 01.03.2020. Thereafter, management No.2 advised the workman to submit a fitness certificate to him. In compliance to that workman submitted a fitness certificate to management No. 2. The workman informed the management No.2 on 04.03.2020 that he is ready to visit head office at Mumbai and requested management No.2 to inform him the date of visit. Management No.2 assured to the workman that he shall inform the date of visit and advised the workman to be in touch with ASM. As per advice of management No.2, the workman enquired from ASM on 04.03.2020, 08.03.2020, 11.03.2020 and 12.03.2020 but no date was given to the workman for visit to Head Quarter rather he advised the workman to contact Vice President of the company. The workman contacted Vice-President of the company on 12.03.2020 and he told the workman that he shall call back but did not receive any response from him thereafter. The workman again wrote a letter to management No.2 on 04.03.2020, 13.03.2020, 02.04.2020 and 25.04.2020 requesting him to inform the date of visit to Head Quarter and also demanded the list of Doctors from whom he can get the second opinion. At the same time the workman also apprised him about his deteriorating financial position. Thereafter, the workman received email

from management No.2 on 28.04.2020 whereby he advised the workman to obtain medical fitness certificate from Civil Surgeon of Government Hospital. In compliance to the mail dated 28.04.2020, the workman sought special permission on 29.04.2020 during Nationwide lockdown from SDM, Nangal to visit office of Civil Surgeon of Government Hospital, Rupnagar. On 30.04.2020 workman got examined himself from Civil Surgeon, Government Hospital, Rupnagar, Punjab and after thorough examination Civil Surgeon issued the fitness certificate and the same was sent to management No.2 on 01.05.2020. In spite of accepting medical certificate issued by Civil Surgeon of Government Hospital, the workman was again asked to comply with letter dated 21.02.2020 as per the mail dated 01.05.2020. The workman wrote back on 01.05.2020 and 03.05.2020 that he has already complied with the letter dated 28.04.2020. Therefore, there is no need of second opinion and to visit Head Quarter. The workman further requested that due to present COVID-19 situation, it is not possible for him to visit Mumbai. In spite of the fact that the workman has sent the fitness certificate duly issued by the Civil Surgeon, Government Hospital, Rupnagar dated 30.04.2020 and informing the managements that due to grave COVID-19 situation he cannot visit to Head Quarter but the management again have been insisting the workman to comply with the letter dated 21.02.2020 for the reasons best known to the management. As soon as the workman had sent the medical fitness certificate duly issued by Civil Surgeon of Government Hospital in compliance to the request of the management, thereafter letter dated 21.02.2021 has no relevancy because fitness certificate issued by Civil Surgeon of Government Hospital is not challengeable by the private Doctors. The workman was not allowed to rejoin his services in spite of repeated reminders, he got served legal notice dated 22.06.2020 followed by reminder dated 20.06.2020 and 12.07.2020. After the second reminder the workman received a letter dated 21.07.2020 from Head Quarter whereby management refused to accept the medical fitness issued by Civil Surgeon of Government Hospital, without any basis and further leveled baseless allegations regarding his ability to perform his duties. The letter dated 21.07.2020 was duly replied through Advocate as per letter dated 30.07.2020 but again joining was refused as per letter dated 05.08.2020. Thereafter the workman had no option than to approach the union / association for filing the demand notice. The management also failed to appear before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. Thereafter, the present dispute was referred to this Court for adjudication. The refusal of joining to the workman in spite of submitting medical certificate duly issued by Civil Surgeon, Rupnagar, by the management is illegal and *malafide* and amounts to unfair labour practice as defined under the ID Act. Due to the acts and conduct of the management the workman had suffered a lot mentally and physically. The workman is unemployed after 28.02.2020 and he has no source of income.

3. Prayer is made that the directions may be issued to the management to allow the workman Pardeep Kumar to re-join his duties at Chandigarh Head Quarter (Charysalis Division) in pursuance of his joining report dated 28.02.2020 and to restrain the management from compelling the workman to travel to Mumbai for second medical opinion, to release the full wages of workman w.e.f. 28.02.2020 till date along with interest, to release full wages of the workman w.e.f. 28.02.2020, to treat the period 05.07.2019 to 28.02.2020 as paid medical leave and not as leave of the kind due and to pay full medical bills and full salary of this period or any other order or direction as deem fit may be issued by this Court.

4. On notice management contested the claim statement by filing written statement on 07.07.2022 wherein it is submitted that the workman has no cause of action and any reference to the management may be deemed as solely referring to the management-company i.e. M/s Bharat Serums & Vaccines Limited and workman may be read as referring to present Pardeep Kumar and Chandigarh Medical Representatives Association. Further, preliminary objections are raised on the ground that the claim filed by the association is not maintainable. The claim has been filed with malafide intention of deriving undue monetary benefit from the management. The present claim statement has been filed on behalf of an alleged workman by Chandigarh Medical Representatives Association arraying itself as the workman in the memo of the parties of the claim. The statement of claim has been filed under the signatures of the President and Secretary of the said association. The statement of claim does not bear the signatures of aggrieved person Pardeep Kumar Nakwal. No verification or affidavit in support has been attached with the statement of claim. The claim does not provide as to which

avermments are true to its belief or knowledge or that nothing has been concealed thereof. The association representing the alleged workman Pardeep Kumar has arrayed itself as a 'workman'. The association not being covered by the definition of 'workman', cannot file a claim for adjudication before this Court and as such the same deserves to be dismissed at the outset on this ground alone. This Court lacks territorial jurisdiction to adjudicate the present case. The office / Head Office of the management is not in Chandigarh U.T. Even as per the appointment letter appended with the statement of claim, the exclusive jurisdiction of the Courts at Mumbai, Maharashtra has been agreed upon. Once the parties had aggrieved in respect of the jurisdiction of the Court to be based at Mumbai, the aggrieved employee has waived his rights to file any proceedings in Chandigarh. Therefore, this Court has no territorial jurisdiction to adjudicate the present case. Even on merits, the alleged workman having been appointed as a Business Development Executive (Medical Representative) is not covered under the definition of 'workman' provided under the ID Act.

5. In the written statement, the management briefly stated the facts that Pardeep Kumar Nakwal working as Area Sales Executive was required to cover his field work on two-wheeler, park his two-wheeler at different places, carrying his bag, meet different Doctors and complete his field work properly. Even after the unfortunate accident, after re-joining his duties he was required to carry out the same work which he was performing earlier. From 05.07.2019 to 15.01.2020 Pardeep Kumar took his medical leave and without taking any permission joined field work on his own without approval of the management. However, till company paid his salaries for three days i.e. 16, 17 & 18 January, 2019 without raising any issues. Further, he went on medical leave once again and was allowed to avail medical leave but as the management become concerned about his fitness for work and efficiency related to his work, a letter dated 21.02.2020 vide mail was sent to Mr. Nakwal on 21.02.2020 to come to Head Office in Mumbai for meeting a health check-up and assured him that the cost will be borne by the company apart from the travel and stay expenses as per his eligibility. Instead of coming to Mumbai Mr. Nakwal wrote email reply dated 28.02.2020 intimating his inability to come to Mumbai, sent management medical papers vide his email dated 01.03.2020 and on 03.03.2020 send a medical certificate from Landmark Hospital making Mr. Nakwal fit to resume his duties w.e.f. 28.02.2020 with the restriction to walk with stick, not to put excessive weight on right leg and to drive 2-wheeler for two months. From 04.03.2020 till 12.03.2020 Mr. Nakwal did not contact the management. On 13.03.2020 Mr. Nakwal showed his interest to come to Mumbai for check up and meeting with Head Office. Unfortunately, from 13.03.2020, Maharashtra Government imposed COVID-19 lock down and from 23.03.2020 National lock down was started by the Union Government. Therefore, Mr. Nakwal could be called at Head Office for check-up and consultant meeting. Even though all other field staff started working from home 19.03.2020, Mr. Nakwal could not be covered under the work from home policy because he was no medical leave by his own conduct and medical certificate sent vide his email (undated certificate from M/s Landmark Hospital) was a conditional medical certificate with certain restrictions, therefore, the management rejected his request to let him resume his duties on medical ground vide email dated 28.04.2020. Further on 30.04.2020 Mr. Nakwal sent medical certificate issued by Civil Surgeon, Rupnagar certifying him medically fit on the basis of clinical ground but certificate has not made him specifically fit for carrying out his duties as Area Sales Executive, which requires him to cover his field work on two-wheeler. After re-joining his duties he will be required to work in the same fashion. Keeping in view the earlier certificate and the second certificate which was silent about him being fit to conduct field work, the management was not convinced about his medical fitness, therefore, on 04.06.2020 management vide email suggest Mr. Nakwal to come to Mumbai for medical check-up in their presence to know whether he was fit to join his duties as Area Sales Executive, which requires him to cover his field work on two-wheeler, park his two-wheeler at different places number of times, carry his bag, meet at least 10 Doctors by going on their clinics / dispensaries etc. Therefore, in the absence of the medical certificate specifically assessing him to cover his field work on two-wheeler, park his two-wheeler at different places number of times, carry his bag, meet at least 10 Doctors by going on their clinics / dispensaries etc., the management was not in position to meet illegal demands of Mr. Nakwal.

6. Further on merits, it is stated that the claim of appointment of Pardeep Kumar is a matter of record. However, workman was required to cover his field work on two-wheeler, part his two wheeler at different places, carry his bag, meet different Doctor and complete his field work properly. The office / Head Office of the management is not in Chandigarh U.T. As per the appointment letter, the exclusive jurisdiction of the Courts at Mumbai, Maharashtra has been agreed upon. Therefore, this Court has no territorial jurisdiction to adjudicate the case. The facts that during the course of his duties, the workman met with an accident on 04.07.2019 and suffered multiple injuries including fracture in his right leg, after accident workman was admitted in Landmark Hospital, Sector 33, Chandigarh and he remained admitted therein up to 06.07.2019 and that the workman was discharged from hospital on 06.07.2019 but remained confined to bed up to 15.01.2020 due to post recoveries from injuries suffered in the said accident, are replied being matter of record. Mr. Pardeep without taking any permission joined field work on his own without approval. Fitness certificate issued by competent authority advised Mr. Nakwal rest for one month, hence made him unable to cover his field work on two wheeler, park his two wheeler at difference places number of times, carry his bag, meet at least 10 Doctors by going on their clinics / dispensaries etc. Once again he was allowed to avail medical leave but as the management become concerned about his fitness for work and efficiency related to his work, a letter dated 21.02.2020 vide mail was sent to Mr. Nakwal on 21.02.2020 to come to Head Office in Mumbai for meeting and health check-up and assured him that the cost will be borne by the company apart from the travel and stay expenses as per his eligibility. Instead of coming to Mumbai Mr. Nakwal wrote email reply dated 28.02.2020 intimating his inability to come to Mumbai, sent management medical papers vide his email dated 01.03.2020 and on 03.03.2020 send a medical certificate from Landmark Hospital making Mr. Nakwal fit to resume his duties w.e.f. 28.02.2020 with the restriction to walk with stick, not to put excessive weight on right leg and to drive 2-wheeler for two months. Further on 30.04.2020 Mr. Nakwal sent medical certificate issued by Civil Surgeon, Rupnagar certifying him medically fit on the basis of clinical ground but certificate has not made him specifically fit for carrying out his duties as Area Sales Executive, which requires him to cover his field work on two-wheeler. After re-joining his duties he will be required to work in the same fashion. The certificate furnished by the Civil Surgeon was client qua the said aspect due to which he was invited to be examined by a team of Doctors appointed by the management. By fitness certificate issued by the Civil Surgeon of Government Hospital, making him medically fit on the basis of clinical ground but the certificate have not made him specifically fit for carrying out his duties as Area Sales Executive which require him to cover his field work on two-wheeler. The intention of Mr. Nakwal are not *bonafide* and clear as he failed to turn up to Mumbai for check up as called upon by the company. Therefore, Mr. Nakwal is treated as no work no pay. Rest of the averments of the claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with cost.

7. The association filed rejoinder wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statements are reiterated.

8. From the pleadings of the parties, following issues were framed vide order dated 18.01.2023 :—

1. Whether the demand raised in the demand notice dated 21.08.2020 by the workers' union are genuine and justified ? If so, to what effect and to what relief the worker union / workman is entitled to, if any ? OPW
2. Whether this Court has no territorial jurisdiction ? OPM
3. Relief.

9. In evidence, the workman Pardeep Kumar Nakwal examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to 'W23'.

Exhibit 'W1' is copy of appointment letter dated 15.06.2009 issued to the workman by the management.

Exhibit 'W2' is copy confirmation letter dated 05.08.2010 issued by management.

Exhibit 'W3' is hardcopy of e-mail dated 17.07.2019 with regard to medical leave of the workman.

Exhibit 'W4' is hardcopy of e-mail dated 16.01.2020 in respect of joining report.

Exhibit 'W5' is copy of medical fitness certificate dated 20.01.2020 issued by Dr. Parminder Singh, Landmark Hospital, Sector-33C, Chandigarh.

Exhibit 'W6' is hardcopy of e-mail dated 21.01.2020 regarding medical leave.

Exhibit 'W7' is copy of medical fitness certificate dated Nil issued by Dr. Parminder Singh, Landmark Hospital, Sector-33C, Chandigarh

Exhibit 'W8' is copy of medical fitness certificate dated 07.02.2020 issued by Dr. V. D. Singh, Landmark Hospital, Sector-33C, Chandigarh along with hardcopy of e-mail dated 20.02.2020.

Exhibit 'W9' is copy of letter dated 21.02.2020 sent through e-mail by the management to the workman.

Exhibit 'W10' is copy of hardcopy of e-mail dated 28.02.2020 in respect of reply to letter dated 21.02.2020.

Exhibit 'W11' is hardcopy of e-mail dated 28.02.2020 sent by the management to the workman whereby he was not allowed to join the duty.

Exhibit 'W12' is hardcopy of e-mail dated 01.03.2020 sent by workman to the management with regard to treatment report.

Exhibit 'W13' is hardcopy of e-mail dated 03.03.2020 sent by the workman to the management whereby he sent medical fitness certificate through e-mail.

Exhibit 'W14' is hardcopy of e-mail dated 28.04.2020 sent by the management to the workman with regard to obtained fitness certificate from Govt. Hospital by the Civil Surgeon.

Exhibit 'W15' is copy of letter dated 30.04.2020 request for obtaining fitness certificate from Govt. Hospital along with medical certificate issued by Civil Surgeon, Govt. Hospital, Ropar sent through e-mail dated 01.05.2020.

Exhibit 'W16' is hardcopy of e-mail dated 01.05.2020 issued by the management to the workman regarding visiting the Head Office at Mumbai.

Exhibit 'W17' is hardcopy of e-mail dated 01.05.2020 issued by the workman to the management whereby he requested to the management for acceptance his fitness certificate due to restriction of Covid-19.

Exhibit 'W18' is hardcopy of e-mail dated 03.05.2020 sent by the workman to the management with regard to rejoining of duties after submission of fitness certificate.

Exhibit 'W19' is copy of legal notice dated 20.06.2020 got issued by the workman to the management through courier.

Exhibit 'W19/A' is original courier receipt dated 22.06.2020.

Exhibit 'W20' is reminder dated 12.07.2020 to legal notice dated 20.06.2020 sent through Registered Post.

Exhibit 'W20/A' is original postal receipt dated 13.07.2020.

Exhibit 'W21' is reply dated 21.07.2020 to the legal notice dated 20.06.2020 received from the management.

Exhibit 'W22' is hardcopy of e-mail dated 30.07.2020 i.e. legal notice sent by the workman to the management for joining.

Exhibit 'W23' is copy of reply dated 05.08.2020 to the legal notice dated 30.07.2020 received from management.

On 06.04.2023 workman closed his evidence in affirmative.

10. On the other hand, management examined RW1 Amey P. Godbole - Senior General Manager (HR), who tendered his affidavit Exhibit 'RW1/A' along with documents Exhibit 'RW1/1' to Exhibit 'RW1/7'.

Exhibit 'RW1/1' is copy of appointment letter dated 15.06.2009.

Exhibit 'RW1/2' is copy of letter dated 21.02.2020.

Exhibit 'RW1/3' is copy of certificate dated Nil issued by Landmark Hospital.

Exhibit 'RW1/4' is hard copy of e-mail dated 28.04.2020.

Exhibit 'RW1/5' is copy of reply dated 21.07.2020 to the legal notice dated 20.06.2020.

Exhibit 'RW1/6' is copy of reply dated 05.08.2020 to the legal notice dated 30.07.2020.

Exhibit 'RW1/7' is copy of resolution dated 19.04.2023.

11. On 13.07.2023 Learned Representative for the management closed oral evidence on behalf of the management. On 02.08.2023 Learned Representative for the management closed the documentary evidence on behalf of the management.

12. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :—

Issue No. 1 :

13. Onus to prove this issue is on the association (workman).

14. Under this issue, AW1 Pardeep Kumar Nakwal (workman) examined himself as his own witness and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to 'W23'.

15. On the other hand, management examined RW1 Amey P. Godbole - Senior General Manager (HR) vide his affidavit Exhibit 'RW1/A' deposed all the material contents of the written statement supported with documents Exhibit 'RW1/1' to Exhibit 'RW1/7'.

16. From the oral as well as documentary evidence led by the parties, it comes out that facts remained admitted between the parties that Pardeep Kumar Nakwal (workman) was working as Area Sales Executive with the M/s Bharat Serums & Vaccines Ltd. In para 10 of written statement management has alleged that Mr. Pardeep Kumar Nakwal working as Area Sales Executive was required to cover his field work on Two Wheeler, park his Two Wheeler at different places, carry his bag, meet different Doctors and complete his field work properly. In rejoinder the association has admitted the contents of para 10 of the written statement. Further there is no dispute between the parties with regard to the facts pleaded in para 3 & 4 of the claim statement that during the course of his duties, workman met with an accident on 04.07.2009 and suffered multiple injuries including fracture in his right leg. After accident the workman was admitted in Landmark Hospital, Sector 33, Chandigarh and he remained admitted therein up to 06.07.2019. The workman was discharged from hospital on 06.07.2019 but remained confined to bed up to 15.01.2020 due to post recoveries from injuries suffered in the said accident. Soon after accident the workman informed his superiors and applied for medical leave as were available to him under the rules as per letter dated 05.07.2019 duly supported by medical record. Workman remained under medical leave up to 15.01.2020. The management in the written statement in reply on merits to para 3 & 4 of the claim statement replied that contents of these paragraphs are matter of record. In this manner the management has not denied the contents of para 3 & 4 of the claim statement. Under the law the fact which is not specifically denied is deemed to be admitted.

17. The dispute remained confined between the parties with regard to the medical fitness of the workman regarding rejoining his duties after availing medical leave. The management has not disputed the fact that from 05.07.2019 to 15.01.2020 the workman took medical leave. Further there is no dispute with regard to the fact that after availing the medical leave the workman performed duty from 16.01.2020 to 18.01.2020. The management has taken the objection that the workman joined field work on 16.01.2020 on his own without

approval of the management. On the other hand, the workman has taken the plea that he joined duties after informing the management. The aforesaid plea taken by the workman that he informed his joining of 16.01.2020 to the management stand proved from email dated 16.01.2020 i.e. Exhibit 'W4'. But the workman has failed to prove that he was allowed to rejoin duty by the management on 16.01.2020. Medical fitness certificate, declaring the workman medically fit to join duties w.e.f. 16.01.2020 is not produced and proved in the evidence. The workman has not disputed the fact that the management has paid him salary for performing duties on 3 days from 16.01.2020 to 18.01.2020. In this regard management in para 11 of brief facts of its written statement pleaded that the company has paid his salary for three days 16, 17, 18.01.2019 without raising any issues. Since the management admitted the fact that workman took leave from 05.07.2019 to 05.01.2020, therefore, the performing of duty by the workman thereafter from 16.01.2019 to 18.01.2019 seems to have been incorrectly written due to clerical mistake instead of correct date i.e. from 16.01.2020 to 18.01.2020. In rejoinder the workman did not deny the fact that he was paid salary for working on 3 days w.e.f. 16.01.2020 to 18.01.2020.

18. Further it is own plea of the workman that after performing duties for 3 days from 16.01.2020 to 18.01.2020 he felt pain and swelling in his leg. On medical check-up the Doctors advised him one month more rest up to 20.02.2020. The aforesaid plea taken by the workman is substantiated with medical certificate Exhibit 'W5' vide which Dr. Parminder Singh has advised rest for one month w.e.f. 20.01.2020. The aforesaid facts are not specifically denied by the management in the written statement but denied for want of knowledge. Admittedly, the workman again applied for extension of his medical leave up to 20.02.2020 and thereafter on account of some other ailment i.e. cyst in the throat, workman again applied for extension of his leave up to 28.02.2020. The facts & circumstances that the workman initially applied leave w.e.f. 05.07.2019 and thereafter applied for extension of leave up to 28.02.2020 on medical grounds, would suggest that up to 28.02.2020 the workman was not medically fit to rejoin his duties.

19. The workman has taken the plea that he again got himself medically examined on 27.02.2020 and after his medical examination he was found fit to join his duties w.e.f. 28.02.2020. To support his plea Learned Representative for the association referred medical certificate Exhibit 'W7' issued by the Doctor of Landmark Hospital. On the other hand, Learned Representative for the management contended that the medical certificate Exhibit 'W7' did not declare the workman completely fit to resume his duties w.e.f. 28.02.2020. To my opinion, the aforesaid contention of Learned Representative for the management carries force because the bare reading of medical certificate of Exhibit 'W7' would show that the workman (patient for the purpose of medical examination) though declared fit to resume his duties w.e.f. 28.02.2020 but with certain precautions / advisory. For better appreciation the contents of medical certificate Exhibit 'W7' are reproduced as below :—

"This is to certify that Mr. Pardeep Kumar, 37 years, male with UHID, 31332 was admitted on 04.07.2019 with C/o # Right Tibia. Patient had undergone Right Tibia Nailing + bone grafting under S.A on 04/07/2019 and was discharged on 06/07/2019 and was advised rest. Patient was revaluated on 27/02/2020 and is now fit to resume his duties w.e.f. 28/02/2020 and is advised to walk with stick, do not put excessive weight on right leg and not to drive in 2 wheeler for 2 months."

20. The workman /AW1 in his cross-examination admitted as correct that as part of his medical record / Exhibit 'W7' he had also submitted a certificate issued by Landmark Hospital wherein he was advised to walk with stick, not put excessive weight on right leg and to drive 2 wheeler for 2 months. From the contents of Exhibit 'W7' coupled with the version of AW1 referred above, it is made out that the workman was not completely medically fit to rejoin his duties on 28.02.2020.

21. Now it is to be seen as to from when the workman become medically fit to rejoin his duties. Undisputedly, the management did not allow the workman to rejoin his duties w.e.f. 28.02.2020 on the basis of medical certificate Exhibit 'W7' but at the same time the management communicated letter dated 21.02.2020 through mail to the workman on 21.02.2020 requiring the workman to come Head Office in Mumbai for meeting and health check up and assured the workman that the cost will be borne by the company apart from the travel and stay expenses as per his eligibility, to which the workman vide email dated 28.02.2020

replied showing his inability to visit Mumbai. Thereafter, on 13.03.2020 the workman offered to visit Mumbai for medical check-up and meeting with Head Office. On account of lock down imposed due to spread of COVID-19, the management could not call the workman at the Head Office Mumbai for medical check-up and consultant meeting at Head Quarter.

22. Further, there is no dispute with regard to the fact that the management vide communication dated 28.04.2020 through email directed the workman to obtain fitness certificate from a Doctor not below the rank of Civil Surgeon along with detailed examination in a Government Hospital. The relevant portion of email dated 28.04.2020 / Exhibit 'W14' is reproduced as below :—

"On 17-Apr-20 in our telecon conversation were in you yourself informed me that you would be working in field with walking stick. Please note that you will be allowed to start field work only if you obtain FITNESS CERTIFICATE that you are able to discharge field work by covering not less than 9 Doctors in the approved list every day from a doctor not below the rank of a civil surgeon along with detailed medical examination in a Government hospital."

In compliance with the directions issued vide Exhibit 'W14', on 30.04.2020 workman got his medical examination conducted from Civil Hospital, Rupnagar and the Civil Surgeon, Rupnagar issued a medical certificate bearing No.Medical/2020/457 dated 30.04.2020, which is reproduced as below :—

"It is certified that Sh. Pardeep Kumar Nakwal S/o Sh. Kishori Lal, 39 years Old Male has been duly examined by the Ortho Specialist Civil Hospital Rupnagar through SMO I/c DH Rupnagar on 30-04-2020. As per their report patient is medically fit on the basis of clinical ground and Radiogram and can be allowed to join his respective duty as per protocol of the company."

23. The copy of application dated 30.04.2020 moved by the workman to the Civil Surgeon, Civil Hospital, Rupnagar along with the entire record of medical examination and medical certificate dated 30.04.2020 is proved into evidence by the workman vide Exhibit 'W15' whereas the only medical certificate dated 30.04.2020 is put in cross-examination to AW1 by the management vide Exhibit 'MX'. Learned Representative for management contended that medical certificate Exhibit 'MX' is insufficient as it is not specifically written in it that the workman is physically fit. As per medical certificate Exhibit 'MX' the workman is not declared medically fit on the basis of physical examination but only on the basis of clinical grounds and therefore, medical certificate Exhibit 'MX' was rejected by the management to allow the workman to rejoin his duties. In this regard, Learned Representative for the management referred cross-examination of AW1 wherein he stated that due to restrictions imposed by the State authorities to contain the spread of COVID-19 he applied and granted pass to get himself medically examined from Civil Hospital, Rupnagar vide Exhibit 'W15' and he obtained the certificate dated 30.04.2020, copy of same is Exhibit 'MX', wherein it is written that he was medically fit on clinical ground. AW1 admitted as correct that in the medical certificate Exhibit 'MX' it is not specifically written that he is physically fit. AW1 in his cross-examination further stated that after submission of medical certificate Exhibit 'MX' the company told him to visit Mumbai for re-medical examination as the company rejected medical certificate Exhibit 'MX'. By making reference to the aforesaid version of AW1 Learned Representative for the management laid much stress on the fact that vide fitness certificate Exhibit 'W15' / Exhibit 'MX' issued by the Civil Surgeon of Government Hospital the workman was declared fit on the basis of clinical grounds but it has not been certified specifically that the workman is physically fit for carrying out his duties as Area Sales Executive, which require him to cover his field work on 2 wheeler. Therefore, the management was not convinced about the medical fitness of the workman. To my opinion, the aforesaid contention raised by Learned Representative for the management is devoid of merits because Civil Surgeon of Government Hospital is competent to issue medical fitness certificate to a patient / person medically examined in the Civil Hospital. In this regard, perusal of Exhibit 'W15' would show that on 30.04.2020 as per the direction of the management, the workman applied to Civil Surgeon, Civil Hospital, Rupnagar for conducting his medical examination for the purpose of issuance of medical fitness certificate and in pursuance of that application the Ortho Specialist of Civil Hospital, Rupnagar physically examined the workman as detailed in OPD prescription

slip. Apart from that on deposit of requisite fee vide receipt dated 30.04.2020 issued by Civil Hospital, Rupnagar X-ray examination of (1) knee AP (2) ankle lateral was conducted and on the basis of the same, medical fitness certificate dated 30.04.2020 was issued to the workman. The opinion of the Civil Surgeon, Civil Hospital, Rupnagar declaring the workman medically fit to join his duties as per protocol of the company cannot be contradicted by any official of the management unless the said official is a registered medical practitioner. The management did not get constituted a Board of Doctors to contradict the opinion of Civil Surgeon of Civil Hospital, Rupnagar. The management even failed to name the person, whom on behalf of the management rejected the medical certificate issued by the competent Doctor i.e. Civil Surgeon, Civil Hospital, Rupnagar. In this regard MW1 in his cross-examination stated that the management had obtained the opinion from Medical Officer of the company with regard to the certificate issued by the Civil Surgeon and the accompanied documents. He cannot tell the name and qualification of the said Medical Officer of the company. MW1 further stated that today he cannot show any document of the management company regarding the opinion of Medical Officer of the company. Furthermore, MW1 stated that the management has not informed the workman that as per the opinion of Medical Officer of the company, the fitness certificate issued by Civil Surgeon is not as per the requirement. To my opinion, from the aforesaid version of MW1, it is duly proved on record that there was no competent Medical Officer of the management company to reject the medical certificate issued by Civil Surgeon, Civil Hospital, Rupnagar. Learned Representative for the management contended that except the medical certificate Exhibit 'MX' no other document such as OPD prescription slip, X-ray report etc. was supplied to the management. To my opinion, the aforesaid contention of Learned Representative for the management is devoid of merits because MW1 in his cross-examination admitted as correct that in compliance to letter Exhibit 'W14', the workman submitted the fitness certificate issued by Civil Surgeon, Civil Hospital, Ropar along with documents relating to his medical examination. In view of the discussion made above, no ground is made out to reject the medical certificate Exhibit 'MX' issued by a competent Doctor i.e. Civil Surgeon, Civil Hospital, Rupnagar. The workman may be medically unfit prior to 30.04.2020 to resume his duties but as on 30.04.2020 the workman was duly medically fit to re-join his duties. From documents Exhibit 'W17' & 'W18', it is duly proved on record that after obtaining medical fitness certificate from the competent authority i.e. Civil Surgeon, Civil Hospital, Rupnagar, as per the requirement of the management, the workman on 01.05.2020 submitted an application through email along with the medical fitness certificate issued by Civil Surgeon, Civil Hospital, Rupnagar seeking permission to resume his duty. When the management did not allow the workman to resume his duty w.e.f. 01.05.2020 then on 20.06.2020 the workman got issued a legal notice to the management for allowing him to resume duty. The management has failed to controvert the fact that after recovering from the injuries sustained in an accident the workman always remained willing to rejoin his duties with the management and it is the management which has wrongly rejected the medical fitness certificate Exhibit 'MX'. The action of the management not allowing the workman to rejoin his duties on the basis of medical certificate Exhibit 'MX' w.e.f. 01.05.2020 is illegal and arbitrary.

24. Learned Representative for the management argued that the association representing the workman Pardeep Kumar has been arrayed itself as a workman. The association not being covered by the definition of the 'workman' cannot file a claim for adjudication before this Court. Moreover, the workman was appointed as a Business Development Executive (Medical Representative). He was his own supervisor. Therefore, Pardeep Kumar Nakwal, Medical Representative does not fall within the definition of 'workman' under Section 2(s) of the ID Act. To support his arguments Learned Representative for the management referred cross-examination of AW1 wherein he has stated that there was no set standard of reporting work done, however, period reports weekly were shared with the Head Office. He used to select and visit the concerned Doctor to promote the product of the company as per his assessment and wisdom and share the success report with the company. He used to visit about 10 Doctors a day subject to their availability. He had no immediate boss to supervise his work. On the other hand, Learned Representative for the workers' union argued that under the provisions of The Sales Promotions Employees (Condition of Service) Act, 1976 (*here-in-after 'Act 1976'*) the employees engaged in sales and promotion of the object falls within the definition of 'Sales Promotion Employee' and the provisions of ID Act have been made applicable to the Sales Promotion Employee. Though the workman Pardeep Kumar does not fall within the definition of the 'workman' under Section 2(s) of the ID Act but by virtue of provisions of Act 1976, being Sale Promotion Employee, he can avail the remedy under the ID

Act. To support his arguments, Learned Representative for the association referred the judgment of Hon'ble High Court of Punjab & Haryana reported in **2019(1) SLJ 352** titled as **Pfizer Limited Pfizer Estate Versus Presiding Officer, Industrial Tribunal, Bathinda & Another** wherein in para 2 of the judgment it is held as below :—

"2. Though described an "officer" yet he does not appear to have performed any supervisory duties of a managerial nature as he had no control over the working of others and thus would clearly fall on the side of labour and not part of the management. There are indications in the appointment letter from one of its terms that the respondent will be covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952. The job entailed mainly tour and travel. He would fall in the category of a medical representative or a salesman exercising no managerial or supervisory powers in the hierarchy of the organization. The Labour Court has understood this issue in the correct perspective by referring to the Sales Promotion Employees (Conditions of Service) Act, 1976. A sales promotion employee is a 'workman' by virtue of an amendment made by the State of Punjab to the Industrial Disputes Act, 1947 ("1947 Act")."

25. In the present case, the association is representing the cause of aggrieved Pardeep Kumar Nakwal and it is to be seen if the Pardeep Kumar Nakwal is a 'workman' competent to seek remedy under the ID Act. In view of the law laid down by our own Hon'ble High Court in the judgment referred supra Pardeep Kumar Nakwal, a Sales Promotion Employee (Medical Representative) is a 'workman' by virtue of an amendment made by State of Punjab to the ID Act.

26. In view of the reasons recorded above, the workman Pardeep Kumar Nakwal is directed to submit his rejoining with the management within 30 days from the date of publication of this Award in Government Gazette and on submission of the joining report, the management will allow him to resume his duties from the date of joining application. For the period w.e.f. 05.07.2019 to 30.04.2020 the workman is entitled to the benefit of medical leave. For the period w.e.f. 01.05.2020 to the date of re-joining, workman is entitled to 25% backwages.

27. Accordingly, this issue is decided in favour of the association / workers' union and against the management.

Issue No. 2 :

28. Onus to prove this issue is on the management.

29. Learned Representative for the management argued that the office / Head Office of the management does not situate in Chandigarh U.T. As per the appointment letter, the exclusive jurisdiction of Courts at Mumbai, Maharashtra has been aggrieved upon. Once the parties agreed in respect of the jurisdiction of the Court to be based at Mumbai, the aggrieved employee has waived off his right to file any proceedings in Chandigarh. Therefore, this Court does not have territorial jurisdiction to adjudicate the present case.

30. On the other hand, Learned Representative for the workman argued that the workman was performing his duties at Chandigarh, U.T. Besides, the unilateral condition imposed by employer in the appointment letter regarding place of jurisdiction in case of dispute is illegal and against the provisions of law.

31. To my opinion, as far as territorial jurisdiction of the present Court is concerned, as per the appointment letter Exhibit 'W1' the location of posting of the workman was Chandigarh U.T. It is admitted fact of the parties that before proceeding on medical leave, the workman was performing his assigned duty within the territory of U.T. Chandigarh. As per the case law referred by Learned Representative for the workman reported in **1994(1) SCT 202** titled as **Haryana Agro Industries Corpn. Ltd. Versus Chandigarh Administration, U.T.**, which is applicable to the facts of the present case to an extent, only the Government in whose territorial jurisdiction the workman was working before his termination, has the jurisdiction to make reference to the Labour Court under Section 10 of the ID Act.

32. As far as the stipulation with regard to the jurisdiction at Mumbai, Maharashtra mentioned in the appointment letter Exhibit 'W1' is concerned, the workman has placed on record copy of the appointment letter dated 15.06.2009 vide Exhibit 'W1' and the management has placed on record copy of the appointment dated 15.06.2009 vide Exhibit 'RW1/1'. As per Exhibit 'W1' and Exhibit 'RW1/1' each page of appointment letter (appointment letter consisting of 4 pages) bears the signatures of Sh. Shashi Chaudhry, General Manager of the management but it nowhere bears the signatures of the workman. At the end of appointment letter there is a column bearing heading 'ACCEPTANCE', which is meant to be signed by the workman but the column of acceptance is blank. It neither bears the name of the workman nor his signature nor the date. There is nothing to assume that all the terms & conditions stipulated in the appointment letter were agreed to by the workman. At the most the terms & conditions stipulated in the appointment letter can be said to have been incorporated unilaterally by the employer. The case law referred by Learned Representative for the workman reported in **2012(3) SCT 413 M.P. (Division Bench)** titled as **M. P. Medical & Sales Representative Association, Bhopal & Others Versus Association General Manager, Camlin Limited** is applicable to the facts of the present case to an extent wherein in para 16, it held as below :—

"16. Now the issue raised by the respondent on the basis of the appointment letter which confers jurisdiction to the Bombay Court is also required to be dealt with. On the said issue the judgment of the Apex Court in the case of Balaji Coke Industry Pvt. Ltd. (supra) has been relied upon by the respondent. In the said context it is to be observed here that the order of appointment has been issued unilaterally by the employer specifying the place of jurisdiction. The said judgment of the Apex Court is based on a bi-lateral contract of arbitration conferring the jurisdiction at a particular court. More so, the said judgment relates to arbitration agreement which is always by-lateral but in case of employees the orders of appointment are issued by the employer unilaterally. Thus the said unilateral order of appointment would not confer jurisdiction to the Bombay Court, and the argument so advanced by the respondent is hereby repelled."

In view of the aforesaid judgment, the present Court is well within its territorial jurisdiction to try and decide the present industrial dispute reference.

33. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

34. In the view of foregoing findings on the issues above, this industrial dispute reference is allowed and answered in favour of the association. The workman Pardeep Kumar Nakwal is directed to submit his rejoining with the management within 30 days from the date of publication of this Award in Government Gazette and on submission of the joining report, the management will allow him to resume his duties from the date of joining application. For the period w.e.f. 05.07.2019 to 30.04.2020 the workman is entitled to the benefit of medical leave. For the period w.e.f. 01.05.2020 to the date of re-joining, workman is entitled to 25% backwages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,

Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 02-08-2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 11th September, 2023

No. 13/2/27-HII(2)-2023/13291.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 59/2020 dated 03.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

KULDEEP SINGH S/O SH. LAWA SINGH R/O HOUSE NO.5193, SECTOR 68, SAS NAGAR MOHALI. (Workman)

AND

1. THE DIRECTOR / PRINCIPAL, GOVT. MEDICAL COLLEGE AND HOSPITAL EDUCATION & RESEARCH, CHANDIGARH ADMINISTRATION, SECTOR 32 UT CHANDIGARH.
2. GOVERNMENT OF INDIA, MINISTRY OF FAMILY AND HEALTH WELFARE, SECTION 2 THROUGH ITS SECRETARY, NEW DELHI. (Management)

AWARD

1. Kuldeep Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that earlier workman filed petition under Section 2-A of the ID Act, reference was sent to the Chandigarh Administration, who further sent referred for adjudication to the Labour Court, U.T. Chandigarh and the same was declined by the then Presiding Officer of the Labour Court, and contractual employee was held not to be employee of Government Medical College & Hospital (GMCH). The present case is filed on the basis of fresh cause of action and on different footings as below :—

- A. The workman was appointed through the contractor against the post of Ward Attendant. Later on the contractor left. The workman continues to serve more than 240 days continuously without any break. The workman was paid salary by the Director of the GMCH. Thereafter, the workman started claiming regularisation of his services but his services were orally terminated without any show cause notice, charge sheet or without following mandatory provisions of the ID Act.
- B. The workman filed case before the Assistant Labour Commissioner (ALC) under the Minimum Wages Act, including other aggrieved workers. The claim was allowed. The Award was passed by Sh. Hoshiar Singh, the then ALC. The management challenged the Award of ALC and filed CWP No.8472 of 2002 before the Hon'ble High Court of Punjab & Haryana. The writ petition was dismissed. The management / GMCH filed LPA No.426 of 2015, vide which the Hon'ble High Court directed the management / GMCH to pay an amount of ₹17,982/-. The said amount was paid through the Court of Chief Judicial Magistrate, Chandigarh, which the workman received from the Court in view of the Award passed by ALC. In this way workman became the employee of GMCH i.e. management No.1 & 2. The Award passed by the then Labour Court, U.T. Chandigarh became redundant. The SLP is still pending for adjudication before the Hon'ble High Court.
- C. The workman along with others workmen moved various representations to the management No.1 & 2 for regularisation of their services, but nothing was done by the management.

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- D. The junior workmen to the workman were retained by the management and they are still retained by the management and they are still continuing. Even thereafter, many posts were filled by the management without considering the case of the workman. There are many hospitals under the jurisdiction of Chandigarh Administration, particularly in Sector 48 and many vacancies and many posts of Lt. Attendant are still lying vacant. The management No.1 & 2 are likely to start recruitment. The workman deserves to be appointed against the post.
- E. Finding no other alternative, workman sent registered legal notice to the management and Union of India. The Union of India vide its letter dated 21.08.2019 replied the legal notice.
- F. The whole action on the part of the management in termination, the services of the workman is illegal, unlawful, unconstitutional and contrary to the mandatory provisions of the ID Act. Said illegal termination deserves to be set aside and the workman deserves to be reinstated with continuity of service, full back wages and consequential benefits.
- G. The workman is not gainfully employed anywhere in India with Government or semi-Government or private organisation.
- H. The cause of action arose in the year 1996, when the workman was employed Ward Attendant. It further arose when services of the workman terminated illegally without following the mandatory provisions of law. Further cause of action arose when ALC passed the Award in favour of the workman including other workmen and it again arose when department filed CWP, which was dismissed and the department filed LPA and in LPA Hon'ble High Court directed the department to pay ₹17,982/- which was paid through cheque by the management. It further arose when ALC directed the workman to approach the Labour Court. The cause of action is recurring.

The claim statement is well within territorial jurisdiction of the present Court. Prayer is made that termination order may be set aside being unlawful, unconstitutional, illegal, null, void and void ab-initio. The workman may be reinstated against the same post with continuity of services, full back wages with continuity of service, seniority and all other consequential benefits.

3. On notice management No.1 & 2 contested the claim statement by filing joint written reply wherein preliminary objections are raised on the ground that the claim statement in fact is a second reference for the same cause of action, praying for setting aside termination of the workman by contractor M/s Enterclimex Security Pvt. Ltd. vide letter dated 31.12.1997 and claiming reinstatement is not legally maintainable being barred by 'res-judicata' because the workman earlier approached this Court against the aforesaid termination order, which was dismissed by this Court. Further, the second reference on the same cause of action is badly time barred at this stage. The present claim statement is bad for non-joinder of necessary party. The workman was engaged as well as his services were terminated by the contractor M/s Enterclimex Security Co. Pvt. Ltd. The contractor who is necessary party in the present litigation has not been impleaded as a party.

4. Further on merits, it is stated that no fresh cause of action has arisen against the management. The pleas taken by the workman are un-founded. The workman was not engaged by the answering management. As per agreement executed with the contractor, persons engaged by the contractor were / are employees of the contractor for all intents and purposes. The relevant part of contract agreement is re-produced as under :—

"Contract agreement read with clause 10(B.I). The persons deployed by the contractor for work in Government Medical College Hospital, Sector-32, Chandigarh shall be the employees of the contractor for all intents and purposes and in no case, there shall be a relationship of employer and employees between the said persons and the Institute. Clause 10(B.3) provides that the contractor shall ensure that all the employees should get minimum wages and other benefits as are admissible under various Labour Laws. As such no liability of any contractual worker lies with this institute."

The answering management did not issue any appointment letter to the workman. As such, there is no employer-employee relationship between the answering management and workman.

5. The order passed in CWP No.8472 of 2002 and interim order(s) passed in LPA No.426 of 2015 have no relation or nexus with the issue(s) now sought to be raised by the workman. In the said litigation, the issue was / is regarding rate of wages or wage rate to be paid to the persons engaged by the contractor (s) / outsourcing agency / agencies. The prayer of the workman in the claim petition filed before the Authority under The Minimum Wages Act, U.T, Chandigarh was limited to the payment of difference of wages between the minimum rates of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor challenging the termination order and claiming re-instatement was not the issue in said litigation. The Hon'ble High Court had directed to ensure the Payment of Minimum Wages in view of the statutory provisions contained in The Minimum Wages Act and did not hold that the workmen are employee of the answering management and there was / is employee-employer relationship between the answering management and workman. In para 3 of legal notice dated 13.08.2018 the workman himself has admitted that his claim against termination of his services by the contractor vide letter dated 31.12.1997 was rejected by the Tribunal. The aforesaid order in CWP No.8472 has not attained finality and stand challenged in LPA No.426/2015 which is pending for adjudication and only interim orders are passed in said LPA. Said interim order is of no avail to the workman. The workman was employed as well as his services were terminated by the contractor and not by the answering management. Thus, question of regularisation does not arise, especially when the workman is not working in the GMCH and has not placed on record any document / letter to show that he was ever appointed by the answering management. The workman has not given any details of so called representation, therefore answering management is not in a position to respond the averments made and reserve its right to respond and reply as and when the workman specify or attach the so-called representations. The persons engaged by the contractor or outsourcing agency are employees of the contractor concerned and not of the answering management. The contractor appoints the Attendant(s) on contract basis through outsource at their own. Therefore, the workmen were employees of the contractor concerned for all intents and purposes. The answering management has nothing to do or has no role in the engagement and / or termination by the contractor. Further, the workman earlier had approached this Court against the termination by the contractor. The said claim / petition was dismissed. As such, the pleas sought to be advanced by the workman that junior had been retained carry no credence and is / are of no avail to the workman. The claim putforth by the workman through his counsel by way of legal notice dated 13.08.20218 was duly examined and a detailed reply dated 26.11.2019 was sent to the workman's counsel rejecting his claim. It is denied for want of knowledge that workman is not gainfully employed. The present claim statement is abuse of law. The reliance being placed upon orders passed in CWP and LPA are no avail to the workman when the workman has already availed the remedy against his termination and this Tribunal dismissed his claim statement which has now attained finality. That being so, the present claim statement is not maintainable and barred by principle of *res-judicata* and barred by limitation. The territorial jurisdiction of the Court is not disputed. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs being not legally maintainable and devoid of merits.

6. The workman filed replication wherein the contents of written reply except admitted facts, are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 04.03.2022 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by principle of *res-judicata* ? OPM
3. Whether the claim of the workman is time barred ? OPM

4. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
5. Relief.

8. In evidence workman Kuldeep Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 20.04.2023 Learned Representative for the workman tendered documents Exhibit 'W1', Exhibit 'W2' and Mark 'A' to Mark 'E'.

Exhibit 'W1' is the certified copy of Execution Application bearing filing No. 2578/2016 before the court of Ld. CJM, Chandigarh, titled as Shri Ajay Kumar & Ors. Vs Govt. Medical College & Hospital, Sector 32, Chandigarh & Ors. seeking to execute the order dated 26.02.1999 in Application No.10/1998 passed by the court of Shri S. S. Chauhan, Authority under the Minimum Wages Act and further in view of the order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015.

Exhibit 'W2' is certified copy of zimni order dated 11.07.2016, 23.08.2016, 01.10.2016, 09.11.2016, 28.11.2016, 07.12.2016, 15.12.2016, 05.12.2016, 21.12.2016, 03.01.2017, 16.01.2017, 21.01.2017, 04.02.2017, 01.03.2017, 05.04.2017, 29.04.2017, 30.05.2017, 31.07.2017, 29.09.2017, 02.12.2017, 06.12.2017 relating to the court of Shri Akashdeep Mahajan, Addl. Civil Judge (Sr. Div.), Chandigarh, pertaining to execution application filing No. 2578 of 2016.

Mark 'A' is photocopy of application dated nil moved by workmen Sohan Singh & Ors. to G.M.C.H. through Shri S.K. Guleria, Advocate regarding joining report of 18 workmen.

Mark 'B' is photocopy of order dated 05.12.1995 of Medical Superintendent, G.M.C.H, Chandigarh.

Mark 'C' is photocopy of joining report dated 03.05.1995 of Bikram Singh S/o Surjan Singh.

Mark 'D' is photocopy of joining report dated 08.05.1995 of Sohan Singh.

Mark 'E' is photocopy of joining report dated 03.05.1995 of Lalit Kumar S/o Ramanand.

9. On 02.05.2023 Learned Representative for the workman tendered document Exhibit 'W3' i.e. copy of order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No. 426 of 2015 titled as Govt. Medical College & Hospital, Chandigarh Versus Authority appointed under Minimum Wages Act and closed the evidence of the workman in affirmative.

10. On the other hand, management examined MW1 Sanjay Kumar - Senior Assistant, Establishment Branch IV, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'.

11. The management also examined MW2 Surinder - Junior Assistant, Establishment Branch - IV, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with document Exhibit 'MW2/1' i.e. copy of letter dated 31.12.1997 issued by Chief Controller for Enterclimax Security to The Director Principal, GMCH, Sector 32, Chandigarh relating to the subject of removal of the contractual Ward Attendants.

12. On 03.07.2023 Learned Law Officer for the management closed the evidence.

13. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :—

Issue NO. 1 & 2 :

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

15. To prove its case, workman Kuldeep Singh examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here

for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'E'.

16. To rebut the case of the workman, management examined MW1 Sanjay Kumar, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written reply which are not reproduced here for the sake of brevity.

17. For corroboration Learned Law Officer for the management referred to testimony of MW2 Surinder, who vide his affidavit Exhibit 'MW2/A', apart from the contents of written reply, deposed that these cases are very old i.e. way back of year 1995-96 and the dealing official / Incharge of Establishment - IV Branch had supplied the record available for drafting reply in the instant matter to legal cell. No such joining report, salary disbursement and muster roll since 1995 of workman is traceable. As per record, the workman was deployed on contract basis through outsource by the contractor M/s National Security & Allied Services, Jalandhar. Therefore, all the record of outsource employee, is concerned with the contractor and termination by contractor M/s Enterclimax Security Co. Pvt. Ltd. To support oral version of MW2, Learned Law Officer referred Exhibit 'MW2/1'.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed against the post of Ward Attendant through contractor National Security & Allied Services, Head Office Punjab (as mentioned in the legal notice dated 13.08.2018 relied upon by the workman). The workman has alleged that his services were terminated without issuing any show cause notice, charge sheet or without following the mandatory provisions of the ID Act. The workman in his claim statement did not mention the date of appointment and date of termination of his services. However, it is own case of the workman that previously he filed a claim statement before the Labour Court / Industrial Tribunal, U.T. Chandigarh challenging his termination order and the said claim statement / industrial dispute reference was dismissed by this Court (in para 3 of legal notice dated 13.08.2018, relied upon by the workman, the date of award passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh is mentioned as 05.03.2007). In the entire pleadings the workman did not mention the particular and details of the previous claim statement wherein he had challenged his termination order. The workman also did not disclose the particular of said claim statement and also did not mention the date of passing of Award vide which the aforesaid claim statement / ID Act has declined by this Court. However, from the copy of legal notice dated 13.08.2018 (relied upon by the workman) in para 3 it is mentioned that his clients filed a case before Labour Commissioner, U.T. Chandigarh for terminating their services. The reference was sent to the appropriate Government of U.T. Chandigarh and reference was also sent to the Labour Court for adjudication but their claim was dismissed by the Labour Court-cum-Industrial Tribunal, Chandigarh vide order dated 05.03.2007. The workman did not place on record the copy of pleadings in the previous industrial dispute reference decided vide Award dated 05.03.2007 by this Court and also did not place on record copy of the said Award dated 05.03.2007. However, the fact remains that the workman in previous industrial dispute reference challenged his termination order and the said previous industrial dispute reference was dismissed by this Labour Court-cum-Industrial Tribunal vide order dated 05.03.2007. Till date the workman has not challenged the order / Award dated 05.03.2007, thus the same has become final.

19. It is own plea of the workman that he was appointed to the post of Ward Attendant by the contractor and later on the contractor left. The workman in the claim statement did not mention up to which year he remained under the contractor or in which month or year the contractor left. However, when put to cross-examination the workman states that he worked as outsource employee in GMCH up to March 1998, he refused to work under new outsource agency, therefore, he was terminated from job. He was not

issued any termination letter or relieving letter by the GMCH, Sector 32, Chandigarh. After termination he filed a case seeking payment of minimum wages before Assistant Labour Commissioner, U.T. Chandigarh. The workman did not plead that till what / which date he was paid salary by the contractor.

20. The workman has alleged that although his previous claim statement whereby he challenged the termination order and sought reinstatement was dismissed by this Court but now present cause of action arises in his favour in view of the interim order passed by the Hon'ble High Court in LPA No.426/2015. Learned Representative for the workman argued that the workman filed claim application before the Assistant Labour Commissioner, U.T. Chandigarh under the Minimum Wages Act, which was allowed by the Assistant Labour Commissioner. The management challenged the order of Assistant Labour Commissioner by filing CWP No.8472 of 2002 which was dismissed. Thereafter management of GMCH filed LPA No.426/2015 before the Hon'ble High Court wherein interim order has passed and direction was issued to the management / GMCH to pay arrears of ₹17,982/- to the workman. The management paid the said arrears to the workman by cheque and said amount was received by the workman in the Court of CJM, Chandigarh. LPA is pending. Learned Representative for the workman laid much stress upon the fact that since the payment is made by management of GMCH to the workman, therefore the previous order / Award dated 05.03.2007, whereby the claim of the workman challenging termination order and seeking reinstatement was dismissed has become redundant. The workman has become employee of GMCH / management No.1 & 2 therefore entitled to regularisation of his services.

21. On the other hand, Learned Law Officer for the management argued that claim application before the ALC is limited to the payment of difference of wages between the minimum rate of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor. The termination order was neither under challenge nor an issue before the ALC. The payment of difference of wages made by the management in compliance with the direction of Hon'ble High Court in LPA No. 426/2015 in no manner has any connection with the termination or regularisation of services of the workman. To my opinion, it is undeniable fact that the workman filed claim application before the ALC, U.T. Chandigarh seeking recovery of difference of wages of Minimum Wages Act and in the said case neither the termination order was under challenge nor in issue. The matter confined in claim application before the ALC was payment of difference of wages only. In this regard, AW1 in his cross-examination stated that after termination he filed a case seeking payment of wages before the ALC, U.T. Chandigarh. The workman has placed on record copy of order dated March 19, 2015 passed by the Hon'ble High Court in CMs 848 and 849 - LPA-2015 in / and LPA No.426/2015 titled as Government Medical College & Hospital, Chandigarh Versus Authority appointed under the Minimum Wages Act vide Exhibit 'W3'. The relevant portion of Exhibit 'W3' is reproduced as below :—

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015."

Admittedly the LPA No.426/2015 is pending before the Hon'ble High Court. Exhibit 'W2' is the copy of all the zimni orders passed in the execution proceedings titled as **Ajay Kumar & Others Versus GMCH-32, Chandigarh** before the Court of ACJ(SD). The relevant portion of order dated 07.12.2016 of ACJ(SD), Chandigarh is reproduced as below :—

"Sh. Yadwinder Singh, Law Officer, GMCH-32 Chandigarh for the respondents no. 1 & 2 suffered a statement that he has brought 29 demand drafts total amounting to Rs.5,21,438/- issued in favour of 29 persons i.e., decree holders mentioned in the

execution application as per the detailed description given in letter dated 02.11.2016 which is already Ex.PX. Kindly placed on record all the 29 demand drafts as mentioned in Ex.PX and it is requested that the demand drafts shall be handed over to the decree holders on their furnishing surety as per the orders of Hon'ble High Court, Chandigarh. In view of above, the above said demand drafts are taken and Ahlmad of this court is directed to tagged the above said drafts in a proper way.

Learned counsel for the applicant undertake to furnish surety bonds within a week in view of order passed by the Hon'ble High Court, Chandigarh. Statement recorded separately. Now, to come up on 15.12.2016 for furnishing the security by the applicants."

22. It is undeniable fact that all the applicants / DHs of execution proceedings furnished requisite surety and the amount of ₹17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in LPA No.426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM / ACJ(SD), Chandigarh.

23. Now the question before this Court is if the interim order dated 19.03.2015 / Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH / or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court, Chandigarh dismissing the IDR / claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh / management No.1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997 / Exhibit 'MW2/1' brought into evidence by MW2. Exhibit 'MW2/1' is the letter of termination the services of the workman by the employer / contractor Enterclimex w.e.f. 31.12.1997. The workman has not impleaded the employer Enterclimex as party to the claim statement, thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997 / Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2 / GMCH Sector 32, Chandigarh. AW1 in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998. He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AW1 would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being outsource employee under the contractor. In this manner the workman was employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any selection process. Hon'ble High Court of Delhi in case of ***Desh Deepak Srivastava Versus Delhi High Court & Another, CWP (C) No. 9570/2015*** held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an ad-hoc for decades.

24. Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 vide which the

claim of the workman seeking to set aside termination order, was discussed. The workman did not challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of *res-judicata* under Section 11 of CPC.

25. Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No.2 is decided in favour of the management and against the workman.

Issue No. 3 :

26. Onus to prove this issue is on the management.

27. The workman has alleged that his services were terminated in the year 1998. He raised 2nd time industrial dispute by raising demand notice in the year 2019 and presented the present claim on 25.08.2020 i.e. after about 22 years of raising demand notice. Thus, the present claim statement is barred by limitation.

28. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 4 :

29. Onus to prove this issue is on the management.

30. The contractor / (last contractor i.e. Enterclimex) was the employer of the workman. The workman has challenged his termination of services without impleading his employer, who was a necessary party. Thus, the present claim statement is bad for non-joinder of necessary party.

31. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

Dated : 03-07-2023.

(Sd.) . . . ,
(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 11th September 2023

No. 13/2/21-HII(2)-2023/13293.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 53/2020 dated 03.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SURAJ MAL S/O SH. OM PARKASH R/O HOUSE NO.1061, SECTOR 25, CHANDIGARH.
(Workman)

AND

1. THE DIRECTOR / PRINCIPAL, GOVT.MEDICAL COLLEGE AND HOSPITAL EDUCATION & RESEARCH, CHANDIGARH ADMINISTRATION, SECTOR 32 UT CHANDIGARH.
2. GOVERNMENT OF INDIA MINISTRY OF FAMILY AND HEALTH WELFARE, SECTION 2 THROUGH ITS SECRETARY, NEW DELHI. (trialgement)

AWARD

1. Suraj Mal, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that earlier workman filed petition under Section 2-A of the ID Act, reference was sent to the Chandigarh Administration, who further sent referred for adjudication to the Labour Court, U.T. Chandigarh and the same was declined by the then Presiding Officer of the Labour Court, and contractual employee was held not to be employee of Government Medical College & Hospital (GMCH). The present case is filed on the basis of fresh cause of action and on different footings as below :—

- A. The workman was appointed through the contractor against the post of Ward Attendant. Later on the contractor left. The workman continues to serve more than 240 days continuously without any break. The workman was paid salary by the Director of the GMCH. Thereafter, the workman started claiming regularisation of his services but his services were orally terminated without any show cause notice, charge sheet or without following mandatory provisions of the ID Act.
- B. The workman filed case before the Assistant Labour Commissioner (ALC) under the Minimum Wages Act, including other aggrieved workers. The claim was allowed. The Award was passed by Sh. Hoshiar Singh, the then ALC. The management challenged the Award of ALC and filed CWP No.8472 of 2002 before the Hon'ble High Court of Punjab & Haryana. The writ petition was dismissed. The management /GMCH filed LPA No.426 of 2015, vide which the Hon'ble High Court directed the management /GMCH to pay an amount of ₹17,982/-. The said amount was paid through the Court of Chief Judicial Magistrate, Chandigarh, which the workman received from the Court in view of the Award passed by ALC. In this way workman became the employee of GMCH i.e. management No.1 & 2. The Award passed by the then Labour Court, U.T. Chandigarh became redundant. The SLP is still pending for adjudication before the Hon'ble High Court.
- C. The workman along with others workmen moved various representations to the management No.1 & 2 for regularisation of their services, but nothing was done by the management.

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<https://egazette.chd.gov.in>*

- D. The junior workmen to the workman were retained by the management and they are still retained by the management and they are still continuing. Even thereafter, many posts were filled by the management without considering the case of the workman. There are many hospitals under the jurisdiction of Chandigarh Administration, particularly in Sector 48 and many vacancies and many posts of Lt. Attendant are still lying vacant. The management No.1 & 2 are likely to start recruitment. The workman deserves to be appointed against the post.
- E. Finding no other alternative, workman sent registered legal notice to the management and Union of India. The Union of India vide its letter dated 21.08.2019 replied the legal notice.
- F. The whole action on the part of the management in termination, the services of the workman is illegal, unlawful, unconstitutional and contrary to the mandatory provisions of the ID Act. Said illegal termination deserves to be set aside and the workman deserves to be reinstated with continuity of service, full back wages and consequential benefits.
- G. The workman is not gainfully employed anywhere in India with Government or semi-Government or private organisation.
- H. The cause of action arose in the year 1996, when the workman was employed Ward Attendant. It further arose when services of the workman terminated illegally without following the mandatory provisions of law. Further cause of action arose when ALC passed the Award in favour of the workman including other workmen and it again arose when department filed CWP, which was dismissed and the department filed LPA and in LPA Hon'ble High Court directed the department to pay ₹17,982/- which was paid through cheque by the management. It further arose when ALC directed the workman to approach the Labour Court. The cause of action is recurring.

The claim statement is well within territorial jurisdiction of the present Court. Prayer is made that termination order may be set aside being unlawful, unconstitutional, illegal, null, void and void ab-initio. The workman may be reinstated against the same post with continuity of services, full back wages with continuity of service, seniority and all other consequential benefits.

3. On notice management No.1 & 2 contested the claim statement by filing joint written reply wherein preliminary objections are raised on the ground that the claim statement in fact is a second reference for the same cause of action, praying for setting aside termination of the workman by contractor M/s Enterclimex Security Pvt. Ltd. vide letter dated 31.12.1997 and claiming reinstatement is not legally maintainable being barred by 'res-judicata' because the workman earlier approached this Court against the aforesaid termination order, which was dismissed by this Court. Further, the second reference on the same cause of action is badly time barred at this stage. The present claim statement is bad for non-joinder of necessary party. The workman was engaged as well as his services were terminated by the contractor M/s Enterclimex Security Co. Pvt. Ltd. The contractor who is necessary party in the present litigation has not been impleaded as a party.

4. Further on merits, it is stated that no fresh cause of action has arisen against the management. The pleas taken by the workman are un-founded. The workman was not engaged by the answering management. As per agreement executed with the contractor, persons engaged by the contractor were /are employees of the contractor for all intents and purposes. The relevant part of contract agreement is re-produced as under:—

"Contract agreement read with clause 10(B.1). 'The persons deployed by the contractor for work in Government Medical College Hospital, Sector-32, Chandigarh shall be the employees of the contractor for all intents and purposes and in no case, there shall be a relationship of employer and employees between the said persons and the Institute. Clause 10(B.3) provides that the contractor shall ensure that all the employees should get minimum wages and other benefits as are admissible under various Labour Laws. As such no liability of any contractual worker lies with this institute."

The answering management did not issue any appointment letter to the workman. As such, there is no employer-employee relationship between the answering management and workman.

5. The order passed in CWP No.8472 of 2002 and interim order(s) passed in LPA No.426 of 2015 have no relation or nexus with the issue(s) now sought to be raised by the workman. In the said litigation, the issue was / is regarding rate of wages or wage rate to be paid to the persons engaged by the contractor (s) / outsourcing agency / agencies. The prayer of the workman in the claim petition filed before the Authority under The Minimum Wages Act, U.T, Chandigarh was limited to the payment of difference of wages between the minimum rates of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor challenging the termination order and claiming re-instatement was not the issue in said litigation. The Hon'ble High Court had directed to ensure the Payment of Minimum Wages in view of the statutory provisions contained in The Minimum Wages Act and did not hold that the workmen are employee of the answering management and there was/is employee-employer relationship between the answering management and workman. In para 3 of legal notice dated 13.08.2018 the workman himself has admitted that his claim against termination of his services by the contractor vide letter dated 31.12.1997 was rejected by the Tribunal. The aforesaid order in CWP No.8472 has not attained finality and stand challenged in LPA No.426/2015 which is pending for adjudication and only interim orders are passed in said LPA. Said interim order is of no avail to the workman. The workman was employed as well as his services were terminated by the contractor and not by the answering management. Thus, question of regularisation does not arise, especially when the workman is not working in the GMCH and has not placed on record any document / letter to show that he was ever appointed by the answering management. The workman has not given any details of so called representation, therefore answering management is not in a position to respond the averments made and reserve its right to respond and reply as and when the workman specify or attach the so-called representations. The persons engaged by the contractor or outsourcing agency are employees of the contractor concerned and not of the answering management. The contractor appoints the Attendant(s) on contract basis through outsource at their own. Therefore, the workmen were employees of the contractor concerned for all intents and purposes. The answering management has nothing to do or has no role in the engagement and / or termination by the contractor. Further, the workman earlier had approached this Court against the termination by the contractor. The said claim / petition was dismissed. As such, the pleas sought to be advanced by the workman that junior had been retained carry no credence and is / are of no avail to the workman. The claim putforth by the workman through his counsel by way of legal notice dated 13.08.2018 was duly examined and a detailed reply dated 26.11.2019 was sent to the workman's counsel rejecting his claim. It is denied for want of knowledge that workman is not gainfully employed. The present claim statement is abuse of law. The reliance being placed upon orders passed in CWP and LPA are no avail to the workman when the workman has already availed the remedy against his termination and this Tribunal dismissed his claim statement which has now attained finality. That being so, the present claim statement is not maintainable and barred by principle of *res-judicata* and barred by limitation. The territorial jurisdiction of the Court is not disputed. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs being not legally maintainable and devoid of merits.

6. The workman filed replication wherein the contents of written reply except admitted facts, are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 04.03.2022:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by principle of *res-judicata* ? OPM
3. Whether the claim of the workman is time barred ? OPM
4. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
5. Relief.

8. In evidence workman Suraj Mal examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 20.04.2023 Learned Representative for the workman tendered documents Exhibit 'W1', Exhibit 'W2' and Mark 'A' to Mark 'E'.

Exhibit 'W1' is the certified copy of Execution Application bearing filing No. 2578/2016 before the court of Ld. CJM, Chandigarh, titled as Shri Ajay Kumar & Ors. Vs Govt. Medical College & Hospital, Sector 32, Chandigarh & Ors. seeking to execute the order dated 26.02.1999 in Application No.10/1998 passed by the court of Shri S. S. Chauhan, Authority under the Minimum Wages Act and further in view of the order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015.

Exhibit 'W2' is certified copy of zimni order dated 11.07.2016, 23.08.2016, 01.10.2016, 09.11.2016, 28.11.2016, 07.12.2016, 15.12.2016, 05.12.2016, 21.12.2016, 03.01.2017, 16.01.2017, 21.01.2017, 04.02.2017, 01.03.2017, 05.04.2017, 29.04.2017, 30.05.2017, 31.07.2017, 29.09.2017, 02.12.2017, 06.12.2017 relating to the court of Shri Akashdeep Mahajan, Addl. Civil Judge (Sr. Div.), Chandigarh, pertaining to execution application filing No. 2578 of 2016.

Mark 'A' is photocopy of application dated nil moved by workmen Sohan Singh & Ors. to G.M.C.H. through Shri S.K. Guleria, Advocate regarding joining report of 18 workmen.

Mark 'B' is photocopy of order dated 05.12.1995 of Medical Superintendent, G.M.C.H, Chandigarh.

Mark 'C' is photocopy of joining report dated 03.05.1995 of Bikram Singh S/o Surjan Singh.

Mark 'D' is photocopy of joining report dated 08.05.1995 of Sohan Singh.

Mark 'E' is photocopy of joining report dated 03.05.1995 of Lalit Kumar S/o Ramanand.

9. On 02.05.2023 Learned Representative for the workman tendered document Exhibit 'W3' i.e. copy of order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015 titled as Govt. Medical College & Hospital, Chandigarh Versus Authority appointed under Minimum Wages Act and closed the evidence of the workman in affirmative.

10. On the other hand, management examined MW1 Sanjay Kumar - Senior Assistant, Establishment Branch IV, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'.

11. The management also examined MW2 Surinder - Junior Assistant, Establishment Branch - IV, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with document Exhibit ;MW2/1' i.e. copy of letter dated 31.12.1997 issued by Chief Controller for Enterclimax Security to The Director Principal, GMCH, Sector 32, Chandigarh relating to the subject of removal of the contractual Ward Attendants.

12. On 03.07.2023 Learned Law Officer for the management closed the evidence.

13. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 & 2 :

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No. 1 is on the workman and onus to prove issue No. 2 is on the management.

15. To prove its case, workman Suraj Mal examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'E'.

16. To rebut the case of the workman, management examined MW1 Sanjay Kumar, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written reply which are not reproduced here for the sake of brevity.

17. For corroboration Learned Law Officer for the management referred to testimony of MW2 Surinder, who vide his affidavit Exhibit 'MW2/A', apart from the contents of written reply, deposed that these cases are very old i.e. way back of year 1995-96 and the dealing official / Incharge of Establishment - IV Branch had supplied the record available for drafting reply in the instant matter to legal cell. No such joining report, salary disbursement and muster roll since 1995 of workman is traceable. As per record, the workman was deployed on contract basis through outsource by the contractor M/s National Security & Allied Services, Jalandhar. Therefore, all the record of outsource employee, is concerned with the contractor and termination by contractor M/s Enterclimax Security Co. Pvt. Ltd. To support oral version of MW2, Learned Law Officer referred Exhibit 'MW2/1'.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed against the post of Ward Attendant through contractor National Security & Allied Services, Head Office Punjab (as mentioned in the legal notice dated 13.08.2018 relied upon by the workman). The workman has alleged that his services were terminated without issuing any show cause notice, charge sheet or without following the mandatory provisions of the ID Act. The workman in his claim statement did not mention the date of appointment and date of termination of his services. However, it is own case of the workman that previously he filed a claim statement before the Labour Court / Industrial Tribunal, U.T. Chandigarh challenging his termination order and the said claim statement / industrial dispute reference was dismissed by this Court (in para 3 of legal notice dated 13.08.2018, relied upon by the workman, the date of award passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh is mentioned as 05.03.2007). In the entire pleadings the workman did not mention the particular and details of the previous claim statement wherein he had challenged his termination order. The workman also did not disclose the particular of said claim statement and also did not mention the date of passing of Award vide which the aforesaid claim statement / ID Act has declined by this Court. However, from the copy of legal notice dated 13.08.2018 (relied upon by the workman) in para 3 it is mentioned that his clients filed a case before Labour Commissioner, U.T. Chandigarh for terminating their services. The reference was sent to the appropriate Government of U.T. Chandigarh and reference was also sent to the Labour Court for adjudication but their claim was dismissed by the Labour Court-cum-Industrial Tribunal, Chandigarh vide order dated 05.03.2007. The workman did not place on record the copy of pleadings in the previous industrial dispute reference decided vide Award dated 05.03.2007 by this Court and also did not place on record copy of the said Award dated 05.03.2007. However, the fact remains that the workman in previous industrial dispute reference challenged his termination order and the said previous industrial dispute reference was dismissed by this Labour Court-cum-Industrial Tribunal vide order dated 05.03.2007. Till date the workman has not challenged the order / Award dated 05.03.2007, thus the same has become final.

19. It is own plea of the workman that he was appointed to the post of Ward Attendant by the contractor and later on the contractor left. The workman in the claim statement did not mention up to which year he remained under the contractor or in which month or year the contractor left. However, when put to cross-examination the workman states that he worked as outsource employee in GMCH up to March 1998, he refused to work under new outsource agency, therefore, he was terminated from job. He was not issued any termination letter or relieving letter by the GMCH, Sector 32, Chandigarh. After termination he filed a case seeking payment of minimum wages before Assistant Labour Commissioner, U.T. Chandigarh. The workman did not plead that till what / which date he was paid salary by the contractor.

20. The workman has alleged that although his previous claim statement whereby he challenged the termination order and sought reinstatement was dismissed by this Court but now present cause of action arises in his favour in view of the interim order passed by the Hon'ble High Court in LPA No.426/2015. Learned Representative for the workman argued that the workman filed claim application before the Assistant Labour Commissioner, U.T. Chandigarh under the Minimum Wages Act, which was allowed by the Assistant Labour Commissioner. The management challenged the order of Assistant Labour Commissioner by filing CWP No.8472 of 2002 which was dismissed. Thereafter management of GMCH filed LPA No.426/2015 before the Hon'ble

High Court wherein interim order has passed and direction was issued to the management / GMCH to pay arrears of ₹17,982/- to the workman. The management paid the said arrears to the workman by cheque and said amount was received by the workman in the Court of CJM, Chandigarh. LPA is pending. Learned Representative for the workman laid much stress upon the fact that since the payment is made by management of GMCH to the workman, therefore the previous order / Award dated 05.03.2007, whereby the claim of the workman challenging termination order and seeking reinstatement was dismissed has become redundant. The workman has become employee of GMCH / management No.1 & 2 therefore entitled to regularisation of his services.

21. On the other hand, Learned Law Officer for the management argued that claim application before the ALC is limited to the payment of difference of wages between the minimum rate of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor. The termination order was neither under challenge nor an issue before the ALC. The payment of difference of wages made by the management in compliance with the direction of Hon'ble High Court in LPA No.426/2015 in no manner has any connection with the termination or regularisation of services of the workman. To my opinion, it is undeniable fact that the workman filed claim application before the ALC, U.T. Chandigarh seeking recovery of difference of wages of Minimum Wages Act and in the said case neither the termination order was under challenge nor in issue. The matter confined in claim application before the ALC was payment of difference of wages only. In this regard, AW1 in his cross-examination stated that after termination he filed a case seeking payment of wages before the ALC, U.T. Chandigarh. The workman has placed on record copy of order dated March 19, 2015 passed by the Hon'ble High Court in CMs 848 and 849 - LPA-2015 in / and LPA No.426/2015 titled as Government Medical College & Hospital, Chandigarh Versus Authority appointed under the Minimum Wages Act vide Exhibit 'W3'. The relevant portion of Exhibit 'W3' is reproduced as below:—

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015."

Admittedly the LPA No.426/2015 is pending before the Hon'ble High Court. Exhibit 'W2' is the copy of all the zimni orders passed in the execution proceedings titled as **Ajay Kumar & Others Versus GMCH-32, Chandigarh** before the Court of ACJ(SD). The relevant portion of order dated 07.12.2016 of ACJ(SD), Chandigarh is reproduced as below:—

"Sh. Yadwinder Singh, Law Officer, GMCH-32 Chandigarh for the respondents no. 1 & 2 suffered a statement that he has brought 29 demand drafts total amounting to Rs.5,21,438/- issued in favour of 29 persons i.e., decree holders mentioned in the execution application as per the detailed description given in letter dated 02.11.2016 which is already Ex.PX. Kindly placed on record all the 29 demand drafts as mentioned in Ex.PX and it is requested that the demand drafts shall be handed over to the decree holders on their furnishing surety as per the orders of Hon'ble High Court, Chandigarh. In view of above, the above said demand drafts are taken and Ahlmad of this court is directed to tagged the above said drafts in a proper way.

Learned counsel for the applicant undertake to furnish surety bonds within a week in view of order passed by the Hon'ble High Court, Chandigarh. Statement recorded separately. Now, to come up on 15.12.2016 for furnishing the security by the applicants."

22. It is undeniable fact that all the applicants / DHs of execution proceedings furnished requisite surety and the amount of ₹ 17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in LPA No.426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM / ACJ(SD), Chandigarh.

23. Now the question before this Court is if the interim order dated 19.03.2015 / Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH / or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court, Chandigarh dismissing the IDR / claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh / management No.1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997 / Exhibit 'MW2/1' brought into evidence by MW2. Exhibit 'MW2/1' is the letter of termination the services of the workman by the employer / contractor Enterclimex w.e.f. 31.12.1997. The workman has not impleaded the employer Enterclimex as party to the claim statement, thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997 / Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2 / GMCH Sector 32, Chandigarh. AW1 in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998. He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AW1 would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being outsource employee under the contractor. In this manner the workman was employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any selection process. Hon'ble High Court of Delhi in case of ***Desh Deepak Srivastava Versus Delhi High Court & Another, CWP (C) No.9570/2015*** held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an ad-hoc for decades.

24. Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 vide which the claim of the workman seeking to set aside termination order, was discussed. The workman did not challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of *res-judicata* under Section 11 of CPC.

25. Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No.2 is decided in favour of the management and against the workman.

Issue No. 3 :

26. Onus to prove this issue is on the management.

27. The workman has alleged that his services were terminated in the year 1998. He raised 2nd time industrial dispute by raising demand notice in the year 2019 and presented the present claim on 25.08.2020 i.e. after about 22 years of raising demand notice. Thus, the present claim statement is barred by limitation.

28. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 4 :

29. Onus to prove this issue is on the management.

30. The contractor / (last contractor i.e. Enterclimex) was the employer of the workman. The workman has challenged his termination of services without impleading his employer, who was a necessary party. Thus, the present claim statement is bad for non-joinder of necessary party.

31. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 03-07-2023.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Aradhana Rani, W/o Kumar Shailesh Sinha, R/o # 1044, Sector 15-B, Chandigarh, have changed my name from Aradhana Rani to Aradhana Sinha.

[1211-1]

I, Mohd. Hafiz, S/o Mohram Ali, R/o House No. 1909, Village Burail, Chandigarh, UT, have changed my name to Mohamad Hafiz.

[1212-1]

I, Paramjyoti Chandi, R/o # 2578, Sector 19-C, Chandigarh, have changed my name to Paramjyoti Thind.

[1213-1]

I, Sunita Rani, W/o Subhash Chander, R/o # 3565, Sector 46-C, Chandigarh, have changed my name from Sunita Rani to Sunita Godara.

[1214-1]

I, Anita Devi, W/o Manoj Kumar, House No. 1847, Small Flats, Dhanas Chandigarh, have changed my name to Anita.

[1215-1]

I, Madhu Kant, S/o Sh. Ram Chander, R/o H. No. 2017, Village Burail, Sector 45, Chandigarh, have changed my name from Madhu Kant to Madhu Sudan.

[1216-1]

I, Aman Vinay Bhardwaj, R/o H. No. 3045, Sector 46-C, 1st Floor Chandigarh, has changed my daughter name Akshada to Akshada Bhardwaj.

[1217-1]

I, Rama Chaudhary, W/o Ajay Kumar, R/o House No. 247, Sector 55, Chandigarh, have changed my name from Rama Chaudhary to Rama Rani.

[1218-1]

मैं, पूजा, पुत्री विजय सिंह, निवासी 2198, न्यू इंद्रा कॉलोनी, मनीमाजरा, यूटी चंडीगढ़, । मैंने अपना नाम पूजा से बदलकर हेमवती रख लिया है।

[1219-1]

I, Rekha Devi, W/o Shivam Kumar Pandey, R/o Prachin Shiv Mandir, Phase-2, Ramdarbar, Chandigarh, have changed my name from Rekha to Rekha Devi. All concerned please may note.

[1220-1]

I, Shivam Kumar Pandey, S/o Chandra Deep Pandey, R/o Prachin Shiv Mandir, Phase-2, Ramdarbar, Chandigarh, have changed my name from Shivam Panday to Shivam Kumar Pandey. All concerned please may note.

[1221-1]

I, Rajender Prasad, S/o Harsh Mani Bhatt, R/o # 3305, Sector 38-D, Chandigarh. declare that I have changed my name from Rajender Prasad to Rajendra Prasad.

[1222-1]

I, Dilbagh Singh, S/o Om Parkash, House 816, Phase-1, Ramdarbar, Chandigarh, have changed my name from Dilbagh Singh to Dilbag Singh.

[1223-1]

I, Amar Jeet, S/o Sarwan Singh, R/o # 400-B, Sector 43-A, Chandigarh, have changed my name to Amarjeet Singh.

[1224-1]

I, Vikash Chauhan, S/o Satya Pal Singh, R/o H. No. 63-III, Block No.-5, CRPF Campus Hallomajra, Chandigarh, have changed my name from Vikash Chauhan to Vikash.

[1225-1]

I, Vijay, S/o Hari Ram, # 1454/15, Sector 29-B, Chandigarh, have changed my name to Vijay Kumar.

[1226-1]

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